

STATE OF INDIANA



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NOV 22 2004

INDIANA UTILITY
REGULATORY COMMISSION

CAUSE NO. 41268-INJ123

SUBMISSION OF INDIANA BELL)
TELEPHONE COMPANY,)
INCORPORATED D/B/A SBC INDIANA)
FOR COMMISSION RECOGNITION)
OF AN AMENDMENT TO AN)
INTERCONNECTION AGREEMENT)
ARRIVED THROUGH VOLUNTARY)
NEGOTIATIONS WITH SAGE)
TELECOM, INC.)

You are hereby notified that on this date the Presiding Officers in this Cause make the following Entry:

On May 5, 2004, pursuant to State and Federal law, Indiana Bell Telephone Company, Incorporated ("SBC Indiana") submitted to the Indiana Utility Regulatory Commission ("Commission") a Tenth Amendment, dated April 30, 2004, to the interconnection agreement in Cause No. 41268-INJ-123ND ("Tenth Amendment"). Cause No. 41268-INJ-123ND is a nondocketed Commission proceeding that was initiated to track a specific interconnection agreement between SBC Indiana and Sage Telecom, Inc. ("Sage") and amendments thereto.

The Commission's review of this Tenth Amendment revealed some language that raised the concern that the Tenth Amendment to the interconnection agreement, as submitted to the Commission, may not comprise all of the amendments to this interconnection agreement between SBC Indiana and Sage. The language that raised this concern is found in Paragraph 6.6 of the Tenth Amendment and reads as follows:

Contemporaneously with this Amendment, the Parties are entering into a Private Commercial Agreement for Local Wholesale Complete ("LWC Agreement"). The LWC Agreement contains provisions that may render it inoperative in one or more states. Should the LWC Agreement become inoperative in any one or more state(s), this Amendment shall immediately become null and void for all purposes in such state(s) and the Parties agree to submit a further amendment immediately to the Commission so reflecting this fact. Such further amendment will be effective retroactively to the time that the LWC Agreement became inoperative. In addition, in the event that at the time that the LWC Agreement becomes inoperative in any state(s), CLEC does not have in effect any agreement in such state pursuant to 47 U.S.C. § 252, CLEC may adopt such agreement pursuant to

§ 252(i) or may purchase under tariff or SGAT or enter into any other arrangement of CLEC's choosing available to it under 47 U.S.C. § 251 and/or 252 at that time, and such arrangement will be deemed effective as of the time that the LWC Agreement became inoperative in such states(s) and the SBC ILECs shall cooperate fully in CLEC's exercise of its right under this Section, provided that the Parties shall have no retroactive monetary true-up compensation obligation to each other for the provision of products and other offerings from the date from July 1, 2004 until the date that the LWC Agreement became inoperative.

The fact that another agreement existed, apparently related to but not submitted with the Tenth Amendment, raised the concern that the entirety of the amendments to the interconnection agreement had not been submitted to the Commission, as required by the Federal Telecommunications Act of 1996 ("Act") and the Commission's December 19, 2001 Order in Cause No. 39983. Section 251 of the Act establishes the obligation among telecommunications carriers, pursuant to agreements reached through good faith negotiations, to provide access to equipment, facilities and services and for interconnection among carriers' networks. Section 252 of the Act requires that any voluntarily negotiated agreement for interconnection, services, or network elements be submitted for approval to the state commission and that the state commission shall either approve the agreement or reject it in whole or in part if it is determined that the agreement, or any portion thereof: (1) discriminates against a telecommunications carrier not a party to the agreement or (2) is not consistent with the public interest, convenience, and necessity.

On May 5, 2004, the Commission sent a letter to SBC Indiana and Sage directing them to submit their entire interconnection agreement. Sage and SBC Indiana responded, in a letter dated May 14, 2004, asserting that their entire agreement was not governed by Sections 251 and 252 of the Act; that those parts of the agreement constituting an interconnection agreement had been filed with the Commission as the Tenth Amendment; and that the remainder was considered by SBC Indiana and Sage to be a private commercial agreement and, therefore, was not required to be submitted to the Commission.

On May 20, 2004, SBC Indiana and Sage voluntarily provided the Commission with a redacted version of the private commercial agreement referenced in the Tenth Amendment titled: *Private Commercial Agreement for Local Wholesale Complete* ("LWC Agreement"). The redacted version of the LWC Agreement was not submitted to the Commission as an amendment to the interconnection agreement. In addition, SBC Indiana and Sage asserted that the redacted portions of the LWC Agreement contained competitively sensitive information. Realizing that the scope of the issues surrounding the Tenth Amendment were exceeding the scope of the process designed for nondocketed proceedings, the Commission, through the Presiding Officers' June 9, 2004 Entry, converted the nondocketed proceeding into this docketed proceeding.

Sprint Communications Company L.P. and United Telephone Company of Indiana, Inc., d/b/a Sprint; AT&T Communications of Indiana, GP, on its own behalf and that of its affiliate TCG Indianapolis; and MCI, Inc. f/k/a WorldCom, Inc. intervened and became parties to this Cause.

The June 9, 2004 Entry directed SBC Indiana and Sage to submit their entire agreement to the Commission. In response to that Entry, on June 17, 2004, SBC Indiana and Sage filed a joint petition seeking confidential treatment of the redacted portions of the LWC Agreement while the entire, unredacted version of the LWC Agreement was under Commission review. This claim for confidential treatment was based on the assertion that the redacted portions constituted trade secret information.

To assist in ruling on the petition for confidentiality, the Presiding Officers, on June 24, 2004, issued an Entry scheduling an in camera hearing for the purpose of viewing the claimed confidential information and to hear argument from the parties on the issue of confidentiality. At the conclusion of the in camera hearing, conducted on July 7, 2004, the Presiding Officers returned the claimed confidential information to SBC Indiana and Sage. The Presiding Officers conducted a second in camera hearing on September 20, 2004, for the purpose of re-examining the claimed confidential information which, on September 23, 2004, was returned to SBC Indiana and Sage.

On October 7, 2004, the U.S. District Court for the Western District of Texas, Austin Division, found that the complete LWC Agreement between Sage and SBC Texas was an interconnection agreement, resulting in SBC Texas publicly filing, under protest, the complete LWC Agreement with the Public Utility Commission of Texas. As a result of the public disclosure of the entire LWC Agreement in Texas, Sage and SBC Indiana, on October 19, 2004, submitted the entire, unredacted LWC Agreement to the Commission. Included with their submission was notification of withdrawal of the petition for confidential treatment. Accordingly, the entire LWC Agreement should be treated as a disclosable public record.

Although the issue of confidentiality is no longer before us, the initial issue remains as to whether the Tenth Amendment can, by itself, stand as an amendment to an interconnection agreement, or whether the LWC Agreement must be considered along with the Tenth Amendment in order to constitute an amended interconnection agreement subject to Commission review. In their October 19, 2004 submission of the LWC Agreement, Sage and SBC Indiana reasserted their position that the LWC Agreement is not an interconnection agreement, and that the Tenth Amendment is the only part of their contractual arrangement that is subject to review by the Commission. In oral argument and in written comments focusing primarily on the confidentiality issue in this Cause, the intervening parties have maintained that the entire LWC Agreement should be filed with and reviewed by the Commission. Prior to October 19th, because of the pending confidentiality claim, the intervening parties did not have access to the claimed confidential portions of the LWC Agreement and, therefore, were not in a position to fully comment on the LWC Agreement and its relationship with the Tenth Amendment.

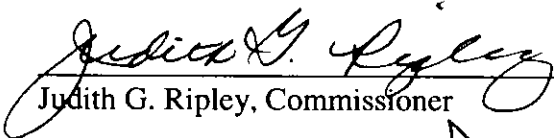
The LWC Agreement and the Tenth Amendment reference each other and appear dependent upon each other. Indeed, Section 5.5 of the LWC Agreement states that “The parties have concurrently negotiated an ICA amendment(s) to effectuate certain provisions of this [LWC] Agreement (“Related ICA Amendments”). The Related ICA Amendmen[t] [in this case, the Tenth Amendment] provides for, among other things, the deletion of certain unbundled local switching with shared transport offerings, changes to unbundled analog loop rates, and waiver of certain of SAGE’s statutory rights under 47 U.S.C. §252(i) and of SBC-13STATE’s obligations under 47 U.S.C. §§ 251 and 252.” Section 5.6 of the LWC Agreement refers to the “indivisible nature” of the LWC Agreement and Related ICA Amendments. As an example of this claimed indivisibility, and consistent with Section 5.5 of the LWC Agreement, the Tenth Amendment, executed by Sage and SBC Indiana on April 30, 2004, contains a negotiated monthly recurring charge of \$20.00 for an unbundled 2-wire analog loop. Yet, before the Tenth Amendment was executed, the Commission, on January 5, 2004, issued an Order in Cause No. 42393 concerning pricing for SBC Indiana’s unbundled network elements that established monthly recurring charges of \$11.50, \$12.50 and \$12.00 for unbundled 2-wire analog loops. Why would Sage, or any other competitive carrier, agree to the Tenth Amendment’s unbundled loop pricing when SBC Indiana is required to provide unbundled loops at the prices established in Cause No. 42393? It seems the answer may lie in other provisions that are found in the LWC Agreement. Viewed as a whole, the interconnection, pricing and other provisions of the Tenth Amendment and the LWC Agreement may make business sense to both SBC Indiana and competitive carriers.

Having reviewed the LWC Agreement and the Tenth Amendment, it is our determination that the LWC Agreement is integral to, and indivisible from, the Tenth Amendment; that both the LWC Agreement and the Tenth Amendment are within the scope of Section 251 of the Act and, therefore, are required to be filed with the Commission; and that both the LWC Agreement and the Tenth Amendment are subject to Commission review as a tenth amendment to an interconnection agreement under Section 252 of the Act.

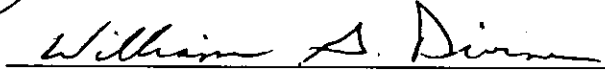
We could resolve this Cause by rejecting the Tenth Amendment as an incomplete agreement as filed and, therefore, possibly discriminatory against competitive carriers other than Sage. However, we have, in fact, reviewed the Tenth Amendment and the LWC Agreement and have found them to be indivisible, constituting a complete amendment to an interconnection agreement. Based on our determination that a complete amendment to an interconnection agreement exists, we find that the complete amended interconnection agreement should be filed with the Commission. Therefore, within fourteen (14) days of the date this Entry is issued, Sage and SBC Indiana should, pursuant to Section 252 of the Act, file their complete, unredacted LWC Agreement with the Commission, which will supplement the already filed Tenth Amendment. Upon receipt of the LWC Agreement filed pursuant to Section 252 of the Act, it, along with the previously and properly filed Tenth Amendment, will be reviewed as a tenth amendment to an interconnection agreement subject to approval, or rejection in whole or in part.

Our June 9, 2004 Entry in this Cause found that neither the May 5, 2004 filing of the Tenth Amendment nor the May 20, 2004 submission of the redacted LWC Agreement triggered any of the time periods, including the time periods for approval or rejection of an interconnection agreement, established in either the Commission's December 19, 2001 Order in Cause No. 39983 or in Section 252 of the Act. Upon filing of the LWC Agreement pursuant to this Entry and Section 252 of the Act, however, such time periods should be applicable.

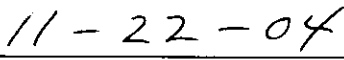
IT IS SO ORDERED.



Judith G. Ripley, Commissioner



William G. Divine, Administrative Law Judge



Date